IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO. 720 OF 2001

DATE OF DECISION: November 10,2006

Gurbachan Singh

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr. Kanwaljit Singh, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

This revision is directed against the acquittal of respondents by the Sessions Judge, Rupnagar, for an offence under Section 302/34 IPC.

Avtar Singh, Harjinder Singh and Netar Singh all residents of Village Mauli Baidwan, District Rupnagar, were tried for having committed the murder of Paramjit Kaur wife of Gurbachan Singh. As per the allegation, on 23.9.1997, complainant Gurbachan Singh, on return from his work, did not find his wife present in the house. Even on search he could not find her and accordingly went to sleep that night. Early in the morning, he again searched for his wife, when he found her dead body lying inside the boundary wall near the flower beds in a school. There were marks of violence and cut on her throat.

Suspecting that somebody had committed rape on her and had thereafter killed her, he lodged this FIR against the present respondents on the basis of a suspicion. The complainant had mainly suspected Avtar Singh, respondent, as he had earlier teased his wife and had an altercation with the complainant. It is on this complaint and on completion of investigation that the respondents were charge-sheeted for an offence under Section 302/34 IPC.

Admittedly, this is a case of blind murder. There is no one to give an eye witness account of the incident. The entire prosecution had followed on the basis of a suspicion. It is, thus, clear that the outcome of this case is fully dependent upon the circumstantial evidence. The prosecution mainly relied upon 3 to 4 circumstances to urge that it had succeeded in establishing the guilt of the respondents. The circumstances so urged by the prosecution are extra judicial confession made before Gurinder Singh, respondent, seen pushing motor cycle and molds of foot prints of respondents. Since Gurinder Singh did not support the prosecution, so the evidence of extra judicial confession could not advance the case of prosecution.

Mr.Kanwaljit Singh, learned counsel for the petitioner has, however, made vehement attempt to urge that two circumstances relating to pushing of the motor-cycle by the respondents and existence of their foot prints revealed from the molds taken would be enough to bring home the guilt of the respondents and accordingly attacked the verdict of acquittal in this case.

The law for basing conviction only on circumstantial

evidence is by now fully settled. It is well settled that in a case depending wholly on circumstantial evidence, the Court, before recording a conviction on the basis thereof, must be firmly satisfied that the circumstances from which the inference of guilt is to be drawn has been fully established by unimpeachable evidence beyond a shadow of doubt; that the circumstances are of determinative tendency unerringly pointing towards the guilt of the accused and that the circumstances taken collectively are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him. Mohammed *Vs. State of U.P.*, AIR 1976 Supreme Court 69 can be referred in this regard. The two circumstances relied upon, when tested in the light of proposition of law as afore-mentioned, would show that these are not of determinative tendency to base the conviction and rather have also not been fully established beyond shadow of doubt. How an evidence of 4 persons pushing a motor-cycle seen near the scene of incident, coupled with some foot prints taken from the place, would be enough to base conviction can not be appreciated. Even the evidence of molds was found to be rather infirm. The evidence revealed in this case that 40 to 50 police officials and 50 to 60 persons of the village had gathered in the ground of the school, where dead body was lying. No evidence had been led by the prosecution to show that the place or the spot from where the molds were taken had been secured in any manner. Evidence in regard to preserving the foot prints noticed at the scene, was also not produced by the prosecution. Even no mention had been made of the existence of foot marks in the inquest report, which did create a serious doubt on

prosecution story. Admittedly, the person, namely, Amarjit Singh, S.P.O., who had been deputed to lift the molds, was not examined by the prosecution. In the light of this evidence, it cannot be said that the circumstance of existence of foot prints was proved to the satisfaction of judicial conscience. In isolation, the evidence of pushing of a motor-cycle in this background is too weak a circumstance to convict the respondents for an offence of murder. Accordingly, no case for interference in this revision is made out.

The same is accordingly dismissed.

November 10, 2006 **(RANJIT SINGH)**
khurmi **JUDGE**